

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
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In the Matter of the Request to Vary Supplier  
Refund Rules Regarding a Kansas Ad Valorem  
Production Tax Refund Made by Mobil Oil  
Corporation

ISSUE DATE: August 8, 2001

DOCKET NO. G-999/AA-98-332

ORDER DIRECTING REFUND

**PROCEDURAL HISTORY**

On April 3, 2001, the Commission received a Joint Recommendation for the refund of Kansas ad valorem tax monies that had been improperly charged from October 1983 through June 1988.<sup>1</sup>

On April 16, 2001, Reliant Energy Minnegasco (Minnegasco) submitted comments supporting the refund plan in the Joint Recommendation.

On May 3, 2001, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) recommended setting aside 25 percent of all monies from the sales and transportation customer refunds for low-income residential energy assistance programs.

On April 20, 2001, the Energy Cents Coalition (ECC) and the Legal Services Advocacy Project (LSAP) recommended using all of the money assigned to sales customers for low-income residential energy assistance programs in addition to the 25 percent set aside from transportation customers. As an alternative, ECC/LSAP suggested: 1) setting aside all of the sales (residential) refund money without the 25 percent set aside of transportation monies, or 2) setting aside 25 percent of all monies from all sales and transportation classes.

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<sup>1</sup> The Joint Recommendation was filed on behalf of the Minnesota Department of Commerce, the Minnesota Office of the Attorney General-Residential Utilities Division, Great Plains Natural Gas Company, Interstate Power Company, Northern States Power Company, Peoples Natural Gas Company & Northern Minnesota Utilities, Divisions of UtiliCorp United, Inc., Eveleth Mines, LLC d/b/a EVTAC Mining, Hibbing Taconite Joint Venture, Ispat Inland Mining Co., Inc., LTV Steel Mining Company, National Steel Pellet Company, Northshore Mining Company, and USX Corporation.

Parties submitted comments supporting one or more of the refund plans. Parties also commented on specific provisions in the various proposals. The LDCs, the Department, and the Large Power Intervenor (taconite customers) supported the Joint Recommendation. The Minnesota Department of Economic Security (MDES), Minnesota Community Action Association (MCAA) and the Salvation Army HeatShare program supported the ECC/LSAP recommendations.

The Commission met on June 21, 2001 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

As of February 9, 2001, Minnesota local distribution companies (LDCs) were holding approximately \$21,465,788 in principal and interest related to this refund.

The relevant rule, the purchased gas adjustment (PGA) rule (Minn. Rules, Part 7825.2700, subpart 8) states:

Refunds and interest on the refunds, that are received from the suppliers or transporters of purchased gas and attributable to the cost of gas previously sold, must be annually refunded by credits to bills, except that cumulative refund amounts equal to or greater than \$5 per customer must be refunded within 90 days from the date the refund is received from a supplier or transporter. Refunds must be allocated to customer classes in proportion to previously charged costs of purchased gas. Within classes, the refund amount per unit must be applied to bills on the basis of individual 12-month usage. The utility shall add interest to the un-refunded balance at the prime interest rate.

Parties initially proposed several different refund plans, all of which required variances from the PGA Refund Rule. The primary plans presented were as follows:

### **I. THE JOINT RECOMMENDATION: Refund Plan #1**

The Joint Recommendation was to refund 100 percent of the money assigned to the sales customer classes to current sales customers and 75 percent of the money assigned to transportation customers to current transportation customers. The amount of refund for individual customers would be based on each customer's actual gas usage for calendar year 2000.

For Peoples Natural Gas Company's (Peoples') Super-Large-Volume customers (formerly the taconite class) the refund monies would be assigned and refunded to them based on their actual usage from October 1983 through June 1988 rather than on the basis of their most recent twelve-months of gas usage. Seventy-five percent of the refund monies assigned to Peoples' Super-Large-Volume customers would be refunded to them.

The parties to the Joint Recommendation also settled on a 25 percent set-aside of the refund monies for current transportation customers (including Peoples' Super-Large-Volume customers). If approved, the set-aside monies would be used for energy assistance for low-income residential customers through a fund administered by the Minnesota Department of Economic Security-Office of Energy Programs (MDES-OEP) in consultation with the Department and the RUD-OAG.

## **II. The RUD-OAG's Proposal: Refund Plan #2**

The RUD-OAG's proposal was to refund 75 percent of the money assigned to sales customers to current sales customers and to refund 75 percent of the money assigned to transportation customers to current transportation customers. With exception of Peoples' Super-Large-Volume customers, the RUD-OAG proposed to assign the refund monies to customer classes based on class usage (estimated if appropriate) from October 1983 through June 1988 and base individual customer refunds within customer classes on actual calendar year 2000 gas consumption.

Under the RUD-OAG's proposal, the refund monies for Peoples' Super Large-Volume (SLV) customers would be assigned and refunded based on Peoples' SLV customers' actual gas consumption from October 1983 through June 1988 and 25 percent of the refund monies from **all** customer classes would be set aside for low-income residential energy assistance.

## **III. Energy Cents Coalition / Legal Services Advocacy Project Proposal: Refund Plan #3**

The ECC/LSAP proposal was to set aside 100 percent of the sales customers' and 25 percent of the transportation customers' refund monies for low-income residential energy assistance. This proposal would refund 75 percent of the money assigned to current transportation customers (including Peoples' Super-Large-Volume customers) to these customers. With the exception of Peoples' Super-Large-Volume customers, the refund monies for current transportation customers would be assigned to customer classes based on class usage (estimated if appropriate) from October 1983 through June 1988 and individual customer refunds within customer classes would be based on actual calendar year 2000 gas consumption. The refund monies for Peoples' Super Large-Volume (SLV) customers would be assigned and refunded based on the actual gas consumption of these customers from October 1983 through June 1988.

#### **IV. CONVERGENCE RECOMMENDATION**

At the hearing on this matter, all parties agreed to support the following refund plan:

1. Set aside 25 percent of the refund monies from all customer classes (sales and transportation) for low-income residential energy assistance.
2. Refund 75 percent of the money assigned to sales customers to current sales customers. Refund 75 percent of the money assigned to transportation customers to current transportation customers.
3. With exception of Peoples' Super-Large-Volume customers, assign the refund monies to customer classes based on class usage (estimated if appropriate) from October 1983 through June 1988 and base individual customer refunds within customer classes on actual calendar year 2000 gas consumption.
4. The refund monies for Peoples' Super Large-Volume (SLV) customers would be assigned and refunded based on Peoples' SLV customers' actual gas consumption from October 1983 through June 1988.

This plan, in essence, was the Attorney General's proposed plan, Refund Plan #2.

#### **V. COMMISSION ANALYSIS AND ACTION**

##### **A. The Refund Plan in General**

In the refund under Commission consideration in this Order, the LDCs will refund monies (refunds and interest on refunds) that Northern (a supplier or transporter of gas) had previously refunded to them. The money refunded to the LDCs had initially been collected from the LDCs' customers through the Purchased Gas Adjustment (PGA) and paid (overpaid as it turned out) to Northern as a cost of gas.

As such, any refund approved by the Commission must be in the public interest as specifically circumscribed by the Commission's PGA Refund Rule, Minn. Rules, Part 7825.2700, subp. 8, unless that rule is varied as provided for in the Commission's Rule Variance Rule, Minn. Rules, Part 7829.3200.<sup>2</sup>

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<sup>2</sup> The Commission's Rule Variance Rule (Minn. Rules, Part 7829.3200) authorizes a variance when the Commission finds that 1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; 2) granting the variance would not adversely affect the public interest; and 3) granting the variance would not conflict with standards imposed by law.

None of the refund plans proposed in this matter strictly followed all the requirements of the PGA Refund Rule. Each proposal involved various variances from that rule. To illustrate:

- Refund Plan #1 initially recommended by Xcel and the other Minnesota LDCs, the Department, and the Large Power Interveners required variances to a) allow the refund to Peoples' Super-Large-Volume customers to be based on the actual usage of individual customers from October 1983 through June 1988 rather than individual customers' recent 12-month usage, and b) allow a different amount of refund to all current transportation customer classes than the rule would authorize.
- Refund Plan #2, initially recommended by the Office of Attorney General and supported by Energy Cents Coalition and Legal Services Advocacy Project as one of its alternative refund plans, required variances to a) allow the refund to Peoples' Super-Large-Volume customers to be based on the actual usage of individual customers from October 1983 through June 1988 rather than individual Peoples' SLV customers' recent 12-month gas consumption, and b) allow a different amount of refund to the sales and transportation customer classes than the rule would authorize.
- Refund Plan #3, initially recommended by Energy Cents Coalition, Legal Services Advocacy Project and supported by Minnesota Department of Economic Security-Office of Energy Programs, Minnesota Community Action Association, and the Salvation Army/HeatShare required variances to a) allow the refund to Peoples' Super-Large-Volume customers to be based on the actual usage of individual customers from October 1983 through June 1988 rather than individual customers recent 12-month usage, b) allow a different amount of refund to the transportation customer classes, and c) allow a different amount of refund (i.e. zero) to the sales customer classes than the rule would authorize.
- The Convergence Plan described above (Refund Plan #2) and ultimately supported by all the parties requires variances noted for Refund Plan #2.

Having examined the issues involved and heard all parties, the Commission will approve the parties' recommendation and direct the LDCs to proceed with a refund per Refund Plan #2 (and as further clarified later in this Order with respect to certain details not specifically addressed by the terms of Refund Plan #2). In reaching this decision, the Commission finds that the variances required for Refund Plan #2 are warranted under the Commission's Rule Variance Rule (Minn. Rules, Part 7825.3200) per the following analysis:

**Variance 1:** To allow Peoples to refund to its Super-Large-Volume customers based on the actual usage of individual customers from October 1983 through June 1988 rather than on these customers' recent 12-month gas consumption.

- **Excessive Burden:** Under the circumstances, enforcing the rule's requirement that refunds to Peoples' Super-Large-Volume customers be based on individual Peoples' SLV customers' recent 12-month gas consumption would impose an excessive burden on these customers. The consumption rate during the most recent 12-month period is a reasonable proxy for gas consumption during the overcharge period in most instances, when actual consumption is unknown. However, in this case, the actual consumption by Peoples' Super-Large-Volume customers is known. In these circumstances, it would be an excessive burden upon these customers to base a refund on any one 12-month period, especially since these customers' consumption varies so widely from year to year.
- **Public Interest:** the public interest is served by a fair refund plan that does not penalize or reward these customers for their changed consumption in intervening years.
- **No conflict with other law:** the Commission finds no statute requiring the Commission to use the most recent 12 months' consumption to calculate the refund. This requirement is created exclusively by Commission rule and, hence, may be varied (as is the case here) pursuant to the standards established by the Commission, Minn. Rules, Part 7829.3200.

**Variance 2:** To direct the LDCs to set aside 25 percent of the amount allocated to the sales class to provide energy assistance to Minnesota's low-income residential sales customers.

- **Excessive Burden:** the PGA Refund Rule would require that all sales customer refund monies be distributed to all current sales customers, based on their current (past 12 months) consumption, without distinction. However, given the passage of so many years since the overcharge period (October 1983 and June 1988), strict compliance with the rule would result in a substantial mismatch between those who paid the overcharged amount and those who would receive the refunds. To illustrate: many of those who paid the overcharge are no longer customers in the State and have been replaced by others who, never having paid a penny of the overcharge, would receive a refund. In addition, many current customers who paid the overcharge may have had a significant shift in their usage of natural gas over the last 15 years. Giving refunds to customers based on their current usage will overcompensate some customers and under-compensate others. The mismatch is exacerbated in this case due to the extreme passage of time.

At the same time, the dramatic and unprecedented rise in the price of natural gas has sorely pressed a particular group of natural gas customers (low-income customers) who have seen their gas bills take a sharply increasing percentage of their income. As a result, the LDCs' level of overdue accounts has risen and additional energy assistance would significantly benefit both the low-income customers and the LDCs who would receive these payments.

In the circumstances, the rule's provisions which would prohibit setting aside 25 percent of the sales refund for low-income heat assistance would impose an excessive burden on the LDCs and their low-income customers.

- **Public Interest:** for the reasons explained above in the “Excessive Burden” discussion, the variance would promote the public interest.
- **Standard Imposed by Law:** the Commission finds no statute requiring the Commission to refund all sales customer refund monies to all current sales customers. This requirement was created exclusively by Commission rule and, hence, may be varied (as is the case here) pursuant to the standards established by the Commission, Minn. Rules, Part 7829.3200.

**Variance 3:** To direct the LDCs to set aside 25 percent of the amount allocable to the transportation class to provide energy assistance to Minnesota's low-income residential sales customers.

- **Excessive Burden:** Whether transportation customers should receive any refund has been a contested and contestable issue in this case. The RUD-OAG opposed any recovery by transportation customers, arguing that they had opted-out of LDC system sales to take advantage of recently deregulated interstate gas markets, thereby waiving their rights to the protections offered by the PGA refund rule. Rather than litigate the issue further and possibly further delay a refund, the parties proposed the 75/25 split of the transportation refund monies and requested a variance to implement such a refund.

In these circumstances, the Commission finds that not granting the variance as requested by the parties would impose an excessive burden upon all parties who have requested it, especially in light of the fact that 1) the 75/25 agreement appears to be a fair settlement of the dispute and 2) directing the 25 percent to low-income heat assistance is a worthy energy customer-related cause that benefits both low-income gas customers and the LDCs, as discussed above.

- **Public Interest:** for the reasons explained above in the “Excessive Burden” discussion, the variance would promote the public interest.
- **Standard Imposed by Law:** granting this variance violates no standard imposed by law. The requirement varied was created exclusively by Commission rule and, hence, may be varied (as is the case here) pursuant to the standards established by the Commission, Minn. Rules, Part 7829.3200.

## **B. Administrator of the Low-Income Heat Assistance Set-Aside Monies**

The Joint Recommendation recommended that the monies set aside for energy assistance for low-income residential customers be placed in a fund administered by the Minnesota Department of Economic Security-Office of Energy Programs (MDES-OEP) in consultation with the Department and the RUD-OAG. Low-income customers could then submit applications to Energy Assistance administrators in the local community action agencies, under the direction of the Department of Economic Security (MDES). MDES would work with the existing Energy Assistance delivery network to verify the income of each applicant and to distribute each utility's residential refund monies to income-eligible residential customers.

The Minnesota Department of Economic Security-Office of Energy Programs (MDES-OEP) administers the Low Income Energy Assistance Program, which some parties have referred to as the Energy Assistance Fund. MDES-OEP stated that it is committed to working with all of parties to this case, and the local community action agencies, at whatever level of funding is authorized, to ensure an effective and efficient refund.

Although the Salvation Army/HeatShare expressed an interest in administering some or all of the set-aside monies and has done commendable work in this area, the Commission believes that the MDES-OEP's extensive experience with administering the low-income heat assistance program and its state-wide presence make it the preferred administrator of the refund amounts set aside in this Order.

Therefore, the Commission will designate the MDES-OEP to administer the set-aside monies for low-income residential energy assistance in consultation with the Department and the RUD-OAG, as recommended by the LDCs, the Department, the RUD-OAG, Energy Cents Coalition, Legal Services Advocacy Project, Minnesota Department of Economic Security-Office of Energy Programs, Minnesota Community Action Association and Large Power Interveners

## **C. Priority for Distribution of Energy Assistance Set-Aside Funds**

### **1. Priority Plan Options**

Salvation Army/HeatShare recommended that the Commission allocate some or all of the refund monies to the "crisis" element of the State's Energy Assistance Program or to the Salvation Army/Heat Share program for immediate energy assistance primarily in "crisis" situations.

Energy Cents Coalition and the Legal Services Advocacy Project recommended that the Commission require the low-income energy assistance monies to be used according to the following priorities. Within the low-income group of customers that submit applications, 80 percent of the refund monies would go on a first-come/first-serve basis to income-eligible customers. The remaining 20 percent would be for customers who are just over the income eligibility guidelines (i.e. up to 60% of State median income) or received assistance but still have past due bills over \$700.



The Minnesota LDCs, the RUD-OAG, and the Department recommended that the administrator be directed to use Minnesota's current energy assistance guidelines, i.e. to base eligibility on the applicant having income no greater than 50 percent of Minnesota's median income.

## **2. Commission Action**

The Commission will direct the administrator to use Minnesota's current energy assistance guidelines. The Commission is not convinced that fine tuning the distribution of these funds adds equity to the program. In addition, the chosen administrator is experienced in implementing the heat assistance program using the current energy assistance guidelines and additional administrative costs due to specialized changes would be unwarranted.

At the same time, however, the Commission will clarify that the administrator will see that the 25 percent set-aside amounts will go only to low-income natural gas users and will be for paying gas bills only.

Finally, to promote equal access amongst the low-income customers of all the LDCs, the Commission clarifies that the monies set aside for low-income residential ratepayers and sent to the MDES-OEP shall be distributed to the LDCs' low-income residential sales customers in proportion to the LDC's customer base. To illustrate: if an LDC's customer base is X percent of all residential sales customers in Minnesota, the administrator will distribute X percent of the set-aside funds for the benefit of that LDC's low-income residential sales customers.

### **D. Outreach to Low-Income Residential Customers**

MDES-OEP noted that over 200,000 eligible households in Minnesota have not applied for or received assistance. Initially, Energy Cents, the Legal Services Advocacy Project, and others advocated for mandatory outreach methods, including the identification of customers with past due bills greater than \$400 and mailing these customers applications for low-income energy assistance. Other ideas included using a Commission-approved bill insert that additional low-income energy assistance is available through local community action agencies and other programs such as HeatShare.

At the hearing, it was generally agreed that since there had never been a problem using all the energy assistance funds made available on eligible households, there was no concern that the additional amount of energy assistance would go unused. There may remain certain parts of the eligible population disproportionately unserved and this may not be by choice. The parties are encouraged to discuss and decide among themselves what and how any additional outreach to low-income residential customers will occur.

## **E. Reports on the Refund**

This is a major refund that has been a long time in coming. The Commission has an interest in being kept apprised of the refund's achievements. In addition to the LDCs' annual automatic adjustment reports which will include a separate report on this refund, the Commission will ask the Department of Commerce to separately report this refund in its annual review of the utilities' fuel reports and require the Department of Economic Security, the RUD-OAG, and the Department of Commerce to report on the low-income distribution portion of this refund.

### **ORDER**

1. The Commission adopts and hereby directs the following refund plan:
  - a. The LDCs shall refund 75 percent of the money assigned to sales customers to current sales customers.
  - b. The LDCs shall refund 75 percent of the money assigned to transportation customers to current transportation customers.
  - c. With exception of Peoples' Super-Large-Volume customers, the LDCs shall assign the refund monies to customer classes based on class usage (estimated if appropriate) from October 1983 through June 1988 and base individual customer refunds within customer classes on actual calendar year 2000 gas consumption.
  - d. Peoples shall assign and refund the refund monies for Peoples' Super Large-Volume (SLV) customers based on Peoples' SLV customers' actual gas consumption from October 1983 through June 1988.
  - e. The LDCs shall set aside (in a fund to be administered per Ordering Paragraphs 3, 4, and 5) 25 percent of the refund monies from all customer classes (sales and transportation) for low-income residential energy assistance.
2. The Commission grants variances from the terms of the PGA Refund Rule, Minn. Rules, Part 7825.2700, subp.8, to
  - a. allow the refund to Peoples' Super-Large-Volume customers to be based on the actual usage of individual customers from October 1983 through June 1988 rather than individual Peoples' SLV customers' recent 12-month gas consumption; and
  - b. allow a different amount of refund to the sales and transportation customer classes (25 percent for low-income residential energy assistance) than the rule would otherwise allow.

3. The Energy Assistance Program (EAP) of the Minnesota Department of Economic Security shall administer the set-aside monies for low-income residential energy assistance in consultation with the Department and the OAG.
4. The energy assistance to low-income residential ratepayers should be prioritized and distributed using Minnesota's current energy assistance guidelines, i.e. eligibility based on the applicant having income no greater than 50 percent of Minnesota's median income, as recommended by Minnesota local distribution companies (LDCs), Department of Commerce, and Office of Attorney General.
5. The Commission further clarifies that the energy assistance portion of the refund will go only to the low-income natural gas users for paying for gas bills only and the monies set aside for low-income residential ratepayers will go to income eligible customers in proportion to the LDCs' customer base.
6. Reporting requirements:
  - a. The LDCs' annual automatic adjustment reports shall include a separate report on this refund.
  - b. The Department of Commerce shall separately report this refund in its annual review of the utilities' fuel reports.
  - c. The Department of Economic Security, the RUD-OAG, and the Department of Commerce shall report on the low-income distribution portion of the refund.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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